condition both of the GTE consent decree[17] and the FCC's Order,[18] and for good reason.

If the interLATA affiliate and the BOC can share transmission and switching facilities, there are significant opportunities for the misallocation of the costs of those facilities between those two entities. As the Commission is aware, the cost of wired telephony networks is largely fixed and also largely shared between services. The plant must be available whether or not a subscriber chooses to use it, and the same plant provides local, access and other services (such as

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[17] Section V.C.1. of that decree provided as follows:

> No [GTE Operating Company] shall provide interexchange telecommunications services or own, individually or jointly with GTE or any other person, facilities that are used to provide such services, provided that nothing in this Final Judgment shall prohibit Hawaiian Telephone Company and General Telephone Company of Alaska from providing telecommunications services between Hawaii and Alaska, respectively, and points outside the United States, and owning the assets necessary to provide such services.

Section IV.A.2.b. similarly forbade GTE from maintaining between SPCC/SPSC and the GTE operating companies common facilities or assets.

[18] The Commission required that SPCC and SPSC, both nondominant long distance providers, "obtain services, facilities and equipment from other GTE companies or affiliates on the basis of an arm's length relationship which reflects the terms, prices and conditions which would be available to any non-affiliated common carrier." 54 RR 2d at 180. It also noted that GTE had represented to the Commission that it would maintain SPSC/SPCC separately from the operating companies. *Id.* at n. 51.

vertical or enhanced services) as well. These characteristics provide ample opportunity to manipulate cost allocations not only between the BOC and its interLATA affiliate but between the various offerings of both entities as well. As the *GTE* court noted, such misallocations can harm not only interexchange competition but monopoly ratepayers as well.

"Independence" surely cannot be equated with common ownership and common use of BOC switches, facilities, buildings, and space. It is safe to say that no unaffiliated carrier would ever share on such a grand scale with the BOC; the BOC affiliate should not be permitted to do so either if the effect of such sharing would impact the regulated accounts subject to the jurisdictional separations process from which access charges are derived.

Sprint therefore urges the Commission to interpret Section 272(b)(1) to forbid the BOC and its interLATA affiliate from owning or sharing joint facilities for the provision of telecommunications services. As Sprint discusses more fully elsewhere, it should also require that the affiliate obtain any regulated BOC services at generally available rates, terms and conditions, on a nondiscriminatory basis.

Second, Sprint urges the Commission to interpret the term "operate independently" in a manner that will permit the Commission to effectively oversee transactions between the BOC's parent holding company (or equivalent thereof, such as a special purpose affiliate), the BOC, and the interLATA affiliate. One likely reason for these words is because the requirements of the other subsections either regulate transactions between the BOC and its affiliate (*see* subsections (b)(2), (3), and (5)) or protect the assets of the BOC from creditors of the affiliate (*see* subsection (b)(4)).

Surely, one of the purposes of the "operate independently" language is to ensure that the kinds of commingling and self-dealing which are forbidden by subsections b(2)-(5) and the discrimination forbidden by Section 272(c)(1) and (e) are not accomplished indirectly through a common parent of both the interLATA affiliate and the BOC. These other subsections require certain types of separation of the affiliate from the BOC but not from the parent holding company or its equivalent.

Obviously the BOC should not be allowed to do indirectly what it cannot do directly. The terms "operate independently" at "arm's length" would therefore appear to limit the BOC's ability to use a holding company or similar artifice to provide indirect

transfers or common relationships when both the BOC and the 272(a) affiliate are dependent on the same entity. Such relationships give rise to considerable discretion in the way charges for these services are allocated between the BOC and the interLATA affiliate, and allocations could vary considerably depending on the strategic needs of the overall enterprise at any point in time.

Under Section IV.A.7. of the *GTE* consent decree, SPCC and SPSC were required to

> (a) obtain all services, information and products from other GTE affiliates (other than the [GTE telephone operating companies] or the Telephone Operating Group of GTE Service Corporation or its successors) only pursuant to contracts, and on terms and conditions no more favorable than such services, information, and products are offered to the GTOCs, and (b) bear the fully allocated cost of any services, information, and products obtained from any such GTE affiliate that are not offered by that affiliate to the GTOCs.

The court found these conditions desirable because the decree thus prohibited "even the more indirect, subtle vehicles for cross-subsidization that are ordinarily the most difficult to detect" and that the afore-mentioned requirements "will make it difficult for GTE to intermingle the operations and finances of the Operating Companies and the acquired entities, and will

increase the likelihood that any cross-subsidization from the regulated monopoly to the competitive operations would be detected." 603 F.Supp. at 738.

And in the *Computer Inquiry II Final Decision*, although the Commission permitted the separated Computer II subsidiary and its regulated carrier parent to procure services (*e.g.* payroll accounting and check preparation) from an unaffiliated entity, it still required these costs to be shared among the affiliated entities on a pro rata basis. In para. 62 of the NPRM, moreover, the Commission proposes to go farther (at least with respect to sharing between the BOC and its affiliate) and to interpret Section 272(b)(3) as forbidding the sharing of in-house functions such as operating, installation, and maintenance personnel, including those otherwise permitted under *Computer II*. Sprint urges that, at a minimum, the Commission adopt its proposal.

If the Commission allows some degree of sharing of services, such sharing should be permitted if and only if such services are to be provided in writing and subject to CC Docket No. 86-111 cost allocation safeguards.[19] If the price for these services is

[19] Sprint has no objection to the BOC and an interLATA affiliate sharing outside services -*i.e.* those provided by an entity unaffiliated with either

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questioned by the Commission or a member of the public, the burden of establishing the fairness of the price should be on the entities providing or receiving that service.

With respect to Section 272(b)(4), Sprint concurs with the Commission's tentative conclusion not to allow a BOC to sign an instrument that would allow the affiliate to obtain credit in a manner that would permit recourse to the assets of the BOC. However, Sprint believes the Commission needs to go farther.

The purpose of this section is, as the Commission points out, to protect the subscribers of the BOC's services from bearing the cost of default of the BOC affiliates. Yet unless the Commission withholds permission, the common parent of the BOC and the affiliate would presumably be permitted to guarantee the affiliate's credit and to pledge its ownership interest in the BOC as security for that guarantee. In the event of default by the affiliate and refusal or inability to pay by the parent, the creditor would be able to seize that ownership interest in order to satisfy the affiliate's obligation. Thus, the affiliate's creditor would in that manner have access to the BOC's assets.

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the BOC or the affiliate-, such as insurance or pension services, provided that each pays fair market value in writing for those services.

Sprint recommends that the parent be permitted to guarantee the credit of the affiliate, but that the creditor not have recourse to BOC assets in the event of default. In this fashion, default would not endanger BOC assets indirectly.

With respect to Section 272(b)(5)'s "arm's length" requirement, Sprint believes that it means more than accounting safeguards. Accounting safeguards are designed to ensure a paper trail so that the Commission or auditors can later ensure that the transactions reflected in the accounting entries were proper. In other words, accounting safeguards are by their very nature backward looking.

Sprint believes that an arm's length requirement is prospective in nature and means more than just accounting requirements. The Commission itself recognized this distinction in *Comsat*, 8 FCC Rcd 1531 (1993) at 1531, where it noted that it had prescribed certain accounting procedures while also requiring "structural separation and arm's-length dealings between the separate elements." The Commission also recognized the distinction between accounting or reporting requirements and other, proactive mechanisms that would facilitate the detection and adjudication of violations of Sections 271 and 272 in para.

96 of the NPRM. Therefore, the term should be read as similarly to the "operate independently" requirement discussed earlier.

V. NONDISCRIMINATION SAFEGUARDS

In Section V, the Commission requests comments on some of the terms and requirements found in Section 272 and other provisions considered in this rulemaking. This is certainly a valid and important exercise. An understanding of the statute obviously begins with a careful analysis of the text itself. Sprint responds to the requests for interpretive comments below. However, it is clear that there comes a point at which further textual analysis is no longer fruitful. The Telecommunications Act of 1996 is complex legislation, dealing with complex subject matter, and is further complicated by virtue of its being grafted onto an existing statute that is itself hardly a model of clarity. The 1996 Act was also bitterly contested and some of its provisions represent compromises where a lack of clarity may not be entirely accidental.

Notwithstanding these problems, it is reasonable to expect that terms will be given the same meaning from section to section, and, even more so, within a given section. But it is also reasonable to expect that this may not universally be the case. In reading the 1996 Act, there are bound to be provisions

that are less than clear. In such cases, consistent with well-established rules of statutory construction,[20] the Commission must -- if it is to perform its tasks properly -- avail itself of the considerable discretion it has, as the agency responsible for administration of the 1996 Act, to interpret the different provisions of that Act consistent with its overall purpose and the underlying goals that Congress sought to achieve by its passage.

A. Non-Discrimination Provisions Of Section 272

1. In paragraph 66, the Commission seeks comment "...on whether, before sunset, the nonaccounting requirements of Section 272(e) are subsumed completely within the requirements of Section 272(c)(1). Sprint does not believe so. Section 272(c)(1) is obviously broader than the specific prohibitions of discrimination encompassed in Section 272(e). On the other hand, Section 272(c)(1) appears to apply only to discrimination between a BOC and its separate affiliate under Section 272(a). Thus, the antecedent of "that company or affiliate" in Section 272(c)(1) is presumably a reference to the Section 272(a) subsidiary mentioned

[20] 2A J. Sutherland, Statutes and Statutory Construction, §46.5 (4th Ed. 1984).

a few words earlier. In contrast, Section 272(e) places certain nondiscrimination requirements on both the BOC and any Section 251(c) affiliate. Accordingly, since a Regional Holding Company may have multiple BOC subsidiaries, any of these BOCs will be prohibited from discriminating in the ways enumerated in Section 272(e) not only against its own Section 272(a) affiliate but also against any Section 272(a) affiliate of any other BOC within the Regional Holding Company. The Commission appears to recognize this in paragraph 79, where it states "[a]lthough sections 272(a) and 272(e) apply to a BOC and an affiliate subject to 251(c), section 272(c) refers only to the "dealings" by a Bell operating company, with its section 272(c) affiliates" [emphasis in original].

2. In paragraph 67, the Commission seeks comment "...on the interplay between the definitions of the terms 'services,' 'facilities,' and 'information' in various subsections of 272 and between Section 272 and Section 251(c)." Section 272(a)(2) makes clear that the term "services" includes telecommunications services, information services, and, perhaps less predictably, manufacturing activities. This meaning of the term "services" is consistent with its use in Section 272(f), at least as regards telecommunications services and information services.

Manufacturing is referred to in Section 272(f) as an "activity."[21]

Given the usage of the term "services" in both Subsections 272(a) and (f), it would seem reasonable to read other parts of Section 272, namely Section 272(c)(1) and (e)(2) and (4), to use the term "services" to include at least telecommunications and information services. Where the Act intends a narrower meaning this is generally specified. For example, Section 251(b)(4) and (c)(4) use the term "telecommunications services," and Sections 272(a)(2)(C) and (f)(2) use the term "information services."

Admittedly, the inclusion of information services within the term "services" in Section 272(e)(4) is somewhat awkward. The discrimination prohibited in Section 272(e)(4) is between the BOC (and its Section 251(c) affiliate) and "all carriers." "Carrier" is defined in Section 3(10) as limited to the providers of "common carriage," or, as it is referred to in the 1996 Act, "telecommunication service."[22] It is not entirely clear why

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[21] Section 272(h) -- which clearly includes not only telecommunications and information services, but also manufacturing -- uses the word "activity" rather than "services."

[22] Part of the difficulty faced in construing Section 272(e)(4) is suggested by the fact that a carrier under Section 3 does not include providers of intrastate (as opposed to interstate) interLATA service. It is doubtful that Section 272(e)(4) intended to carry over this distinction. It is certainly

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Congress would have wanted to forbid "service" discrimination -- including the provision of enhanced services -- between BOC Section 272 affiliates and telecommunication carriers, but to exclude enhanced service providers. In other words, a BOC would not be able to sell enhanced services to its own Section 272 affiliate unless it also agreed to sell the same enhanced services at the same rates, terms and conditions to a telecommunications provider (*i.e.*, a "carrier"). At the same time, it could sell the enhanced service to its Section 272(a) affiliate without making such enhanced service available to other, unaffiliated ESPs. Fortunately, any lack of clarity on the inclusion of enhanced service within the meaning of the term "services" in Section 272(e)(4) would not appear to be a source of substantial controversy, particularly in light of the broader antidiscrimination language in Section 272(c)(1) (see also §274(d)). Any concern that the Commission may have as to uncertainty in interpreting Section 272(e)(4) should "keep" until

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possible that the use of the term "all carriers" in Section 272(e)(4) was intended to have a definition broader than that given it in Section 3 and to include not only intrastate providers but also providers of any enhanced services.

after "sunset" in Section 272(f) (when the protections of Section 271 are removed) and perhaps for a long time thereafter.

The term "service" itself would appear to denote a complete offering to the public and to be used in contrast to the term "facility," which would appear to denote an element or piece part of the service. Thus, various "facilities" are put together by service providers to offer "services." Various unbundled network elements required under Section 251(c)(3) would be included within the term "facilities" (compare §251(b)(1) and (c)(4) with §251(c)(2)) since such network elements are to be combined into services to end users.[23]

The term "information" would appear to be given its ordinary dictionary meaning as "the communication or reception of knowledge or intelligence."[24] "Information" is limited by the terms of Section 272(e)(2) to that "concerning [the BOCs'] provision of exchange access" to its Section 272(a) subsidiary. There is no such limitation as to "information" "provided or

[23] It is not clear whether the use of the term "facilities" in Section 272(c)(1) and (e) is the same as found in Section 251(c)(2). Facilities under Section 272 may well include not only Section 251(c)(2) "facilities," but also the "network equipment" referred to in Section 251(c)(2). Here again, any confusion would not appear to engender serious consequences.

[24] Webster's New Collegiate Dictionary (1981 ed.).

procured" under Section 272(c)(1) and presumably none was intended.

Finally, the term "goods" in Section 272(c)(1) would also appear to have its dictionary meaning[25] and to be broadly used to refer to any product or at least manufactured product. There is no indication that another meaning is intended.[26]

Sprint does not believe that there is much, if anything, to be gained by the Commission in further defining the terms "goods, services, facilities and information." As explained above, there would not appear to be any significant confusion caused by these terms which would warrant the Commission's immediate attention.

3. In paragraph 67, the Commission requests the parties to comment

> on whether the terms of sections 272(c)(1) and (e) could be construed to require a BOC to provide a requesting entity with a quality of service or functional outcome identical to that provided to its affiliate even if this would require the BOC to provide goods, facilities, services, or information to the requesting entity that are different from those provided to the BOC affiliate.

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[25] Webster's New Collegiate Dictionary defines "good" as "something that has economic utility or satisfies an economic want."

[26] *See United States v. Kelly*, 519 F.2d 251, 256 (8th Cir. 1975), citing Helvering v. Hammel, 311 U.S. 504 61 S.Ct. 368.

The answer is clearly yes. It is essential to the prohibition of discrimination in Section 272(c)(1) that both affiliated and nonaffiliated entities are able to obtain the same "quality of service or functional outcome." In the absence of such equality, fair competition could hardly be expected to exist. Of course, if different inputs are provided to the affiliated entity and the nonaffiliated entity in order to obtain the identical "quality of service or functional outcome" (and it is reasonable to use those different inputs), the BOC can and should charge a rate differential which reflects any cost difference necessary to achieve such a result.

4. In paragraph 68, the Commission asks for comment on "variations between...categories of entities when implementing sections 272(c)(1) and (e), and the applicability of these sections to ESPs that are currently able to obtain unbundled network services under *Computer III* and *ONA*."
Section 272(c)(1) protects against BOC discrimination against any unaffiliated "entity." This is also true of Section 272(e)(1). The term "entity" is defined for purposes of Section 274 as "any organization, and includes corporations, partnerships, sole proprietorships, associations and joint ventures" (see

§274(I)(6)). It would seem reasonable to give the term "entity" the same meaning in Section 272. As already noted, Section 272(e)(2) and (4) would appear to apply to both telecommunications and information service providers. In contrast, Section 272(e)(3) prohibits discrimination against "unaffiliated interexchange carriers." Since this provision protects against discrimination in the pricing of "access to...telephone exchange service and exchange access" (the term "service" is not used in Section 272(e)(3)), it would seem reasonable to limit "unaffiliated interexchange carriers" to providers of interLATA telecommunications services.[27]

B. Applicability of Pre-existing Nondiscrimination Requirements

In paragraph 69, the Commission request comments "...on the relationship between the nondiscrimination obligations imposed by sections 272(c)(1) and 272(e) and the Commission's pre-existing nondiscrimination provisions" and whether it needs to prescribe "nonaccounting, nondiscrimination rules" to implement the new

[27] In response to the Commission's inquiry in paragraph 68, it seems clear that ESPs able to obtain unbundled network services under *Computer II* and ONA are also protected by the nondiscrimination safeguards in Section 272(c)(1) and 272(e)(1),(2) and probably (4).

nondiscrimination requirements. The new nondiscrimination requirements in Section 271(c)(1) and 272(e) augment the Commission's existing nondiscrimination provisions. There would not appear any reason for the Commission to describe any nonaccounting, nondiscrimination rules to implement these sections. Any further definition can be left to individual cases.

Sprint agrees with the Commission's tentative conclusion in paragraph 70 that "any transfer by a BOC of existing network capabilities of its local exchange entity to its affiliates is prohibited by Section 272(a)..." and, that even if such a transfer were permitted, Section 3(4)(b) would require the receiving entity to be considered a BOC "successor or assign."[28] In addition, a Section 272(a) separate affiliate which receives "network capabilities" from a BOC could probably not be thought of as "operating independently" of the BOC, as required by Section 272(b)(1), or to be conducting all its transactions on an "arms-length's basis" with the BOC (as required by Section 272(b)(5)).

[28] The reference here is, of course, to the equity ownership in the facility and not to the provision of local service by the Section 272 separate affiliate pursuant to Section 251(c)(3) or (c)(4).

C. Section 272(c)(1)

In paragraphs 72-79, the Commission requests additional comments on how to define the limits of prohibited discrimination under Section 271(c)(1) and the utility of any further nonaccounting safeguards that may be ordered to prevent such discrimination. Sprint fully agrees with the Commission's tentative conclusion (¶73) that

> ...section 272(c)(1) means, at minimum, that BOCs must treat all other entities in the same manner as they treat their affiliates, and must provide and procure goods, services, facilities and information to and from these other entities under the same terms, conditions, and rates.

A BOC is permitted to "...treat unaffiliated entities differently with respect to the activities at issue in Section 272(c)(1)," only if it can justify such treatment "upon an appropriate showing" that (1) such treatment is required by variations in the network architecture of affiliated and unaffiliated entities and (2) the prices charged the different entities receiving disparate treatment are based upon costs.

As noted herein, and as the Commission found with respect to "non-discrimination" in Section 251 in its *Interconnection Order* (at ¶¶217-18 and 859), the "flat prohibition on discrimination" (¶72) in Section 271 reflects a stricter standard for

discrimination than that contained in Section 202. Given that Section 271 is clearly intended to prevent the leveraging of monopoly power into adjacent markets, it would seem reasonable that the "flat" prohibition requires that a telecommunications provider justify a difference in price between similar services by demonstrating that such difference is based solely on a difference in cost as the Commission found, with respect to Section 251, in the *Interconnection Order* (at ¶¶860-61). Thus, if a BOC is required to provide different interconnection arrangements to its affiliated entity than are provided to unaffiliated entities (perhaps because, as the Commission suggests (¶73), there are "differences in the unaffiliated entities' network architecture"), the BOC must demonstrate that such different arrangements are reasonable and that any difference in price reflects a demonstrated difference in the cost of such interconnection.

In order to enforce the nondiscrimination requirements of Section 272(c)(1), all telecommunications services provided by the BOC to its affiliate must be provided at generally available rates, terms and conditions, and must be cost-justified. Similarly, the prices at which the BOC provides enhanced service to a Section 272(a) affiliate must be made public (presumably

through the publication of a price list) and made generally available. Such publication would help facilitate a comparison of the prices charged by the BOC to its affiliate for enhanced services and the public rates for the basic services or basic "network elements" over which the enhanced service is provided.

Sprint also agrees with the Commission as to the need for even-handed dissemination of network information by a BOC. Any network information provided by a BOC to its Section 272(a) affiliate should also be made public. The duty of a BOC to provide notice of network changes is contained in Section 251(c)(5), which places upon a BOC (and other incumbent LECs) the obligation to provide "reasonable public notice of [network] changes...." The Commission recently imposed on incumbent LECs rules requiring the latter to give advance public notice of network changes. *See Second Report and Order* in CC Docket No. 96-98, FCC 96-333, released August 8, 1996.[29]

[29] It is unclear to what extent, if any, the rules adopted in the *Computer III* and *ONA* proceedings (¶75) will be of utility in enforcing Section 272(c)(1). The efficacy of these rules remains untested because the BOCs, to date, have not provided enhanced services on a significant scale and unaffiliated ESPs obtain access under local tariffs, rather than interstate tariffs. ESPs do this for the simple reason that local access is cheaper. However, by avoiding interstate service they obtain no protection against discrimination from the Commission's ONA rules.

In paragraph 78, the Commission asks for comment on "what 'standards' are encompassed by" Section 272(c)(1). As with other undefined terms in the 1996 Act, there is nothing to suggest that the term "standards" means something other than its commonly understood, dictionary definition.[30] Section 272(c)(1) prohibits, by its terms, a BOC from discriminating between its Section 272(a) affiliate and an unaffiliated entity in the "establishment of standards relevant to the provision of telecommunications and information services and the procurement of "goods." It is not apparent that additional definitions or rules could be helpful at this juncture in the explication or enforcement of the requirements for nondiscrimination in the "establishment of standards."

As the Commission correctly points out (¶78), a BOC's possession of proprietary

> ...knowledge of both its affiliate's and its competitors' networks might also allow a BOC to adopt or modify equipment standards that its affiliates would be able to comply with more easily, or at less cost, than could unaffiliated carriers.

[30] Webster's New Collegiate Dictionary defines "standard" in the sense that it is used here as "something set up and established by authority as a rule for the measure of quantity, weight, extent, value or quality."

However, unless the BOC's intention to discriminate is apparent from its conduct (which would not be the case if a BOC is sufficiently subtle), it would be difficult to show that a BOC's otherwise neutral actions are, in fact, discrimination in the "establishment of standards." As Sprint suggests above, this problem and other difficulties in implementing and enforcing rules against BOC discrimination must be considered before the Commission allows BOC entry into the interLATA market.[31]

D. Section 207(e)

As the Commission suggests in paragraph 80, although Section 272(e) does not "sunset," subsections (e)(2) and (4) would be effectively rendered inoperative if the BOC no longer has a Section 272 affiliate.

E. Section 272(e)(1)

Sprint agrees with the Commission that an "unaffiliated entity" under Section 272(e)(1) is any entity which is not a BOC affiliate within the meaning of Section (3)(1); that the term "requests" refers to "...initial installation requests, as well

[31] Sprint does not believe that a BOC should be forced "to participate in standard-setting bodies...." Nevertheless, the failure of a BOC to participate in the development of standards or its refusal to abide by the standards established by industry groups may be considered as evidence of a BOC's intent to discriminate in the establishment of standards.

as any subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance..." (¶83); and that Section 272(e)(1) refers only to equality "in terms of timing." Section 272(e)(1) can perhaps best be enforced through reporting requirements. A BOC (and this applies to the BOC's Section 251(c) affiliates as well) should be required to show time intervals for fulfilling requests for its own affiliate and of its affiliate's Section 272(a) affiliate, on the one hand, and unaffiliated entities, on the other, similar to those required under ONA[32] and ARMIS.

F. Section 272(e)(2)

Sprint has already discussed above its suggestions for preventing discrimination in the provision of "facilities," "services," or "information." In order to comply with Section 272(e)(2), any obligations placed upon the BOCs by the Commission in enforcing Section 272(e)(2) must also be applied to their

[32] The BOCs are subject to certain nondiscrimination installation and maintenance reporting requirements under the Commission's ONA regime. The BOCs are required to file information on the number of total orders; due dates missed; percent of due dates missed; and average intervals, for each category of service offered. These reports are filed separately for BOC-affiliated ESP operations, and all others, to help determine whether preferential treatment is being accorded by the BOC to its ESP affiliate in the installation and maintenance of basic access services. *See Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, Memorandum Opinion and Order on Reconsideration* released May 8, 1990 (FCC 90-134), Appendix B.

Section 251(c) affiliates. As also noted earlier, Sprint believes that the phrase "other providers of interLATA services" probably should be read to include both providers of telecommunications and information services.

G. Section 272(e)(3)

Sprint agrees that "the BOCs' provision of telephone exchange and exchange access services under tariffed rates, including their affiliates' purchase at these rates pursuant to tariff or imputation of these rates to the BOCs..." (¶88) is essential to the enforcement of Section 272. Sprint has no additional regulations to suggest.

H. Section 272(e)(4)

As already noted, Sprint believes that the term "services" in Section 272(e)(4) refers to both telecommunications and information services. The use of the term "facilities" is perhaps less clear, but given the juxtaposition of the two terms, facilities should probably also be read to encompass facilities provided by a BOC to its Section 272(a)(2) affiliate for both telecommunications and information services.

VI. MARKETING PROVISIONS OF SECTIONS 271 AND 272

The Commission asks what regulations are necessary to implement Section 272(g)(1)'s requirement that a BOC affiliate

required by that section may not market or sell telephone exchange services provided by the BOC unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

Sprint believes the Commission should clarify in its rules that the term "same or similar service" means that the BOC interLATA affiliate may not market or sell telephone exchange service with its interLATA offering unless other unaffiliated entities offering the same or similar *interLATA service* as the BOC affiliate are permitted to market and sell the BOC's telephone exchange service as well.

It would be strange for that term to be understood as referring to the BOC's telephone exchange service. Such a reading would mean that independent entities offering only competing telephone exchange service and marketing the BOC's telephone exchange service in conjunction with the former's own exchange offering would trigger the BOC interLATA affiliate's ability to engage in the joint marketing of interLATA service and exchange service.

As the Commission recognized in footnote 165 of the NPRM, the legislative history of the joint marketing provision was intended to provide parity among competing industry sectors.